



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

Date: December 8, 2016

Number: **201715004**
Release Date: 4/14/2017
UIL: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

CERTIFIED MAIL – RETURN RECEIPT

Dear _____ :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated July 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. Your activities consist of activities that generally promote social welfare and recreational purposes. These activities are not inherently educational or charitable by themselves under IRC 501(c)(3). An organization cannot be recognized as exempt under IRC 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, educational or other exempt purposes. Thus, you failed to meet the operational test of IRC 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

You also have the right to contact the Office of the Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Exempt Organizations Examinations

Date: July 22, 2016
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's Name/ID Number:

Manager's Contact Number:

Response due date:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear _____:

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

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| Form 886-A (Rev. January 1994) | EXPLANATIONS OF ITEMS | | Schedule number or exhibit |
| Name of taxpayer | Tax Identification Number | Year/Period ended 12/31/20XX | |

Issues:

- 1) Does (Organization) continue to qualify for exemption under IRC section 501(c)(3) if it's Articles of Incorporation does not meet the organizational test required by Treasury Regulation Section 1.501(c)(3) -1(a)(1)?
- 2) Does the Organization continue to qualify for exemption under IRC Section 501(c)(3) if it has failed to demonstrate that it's 501(c)(3) activities are substantial in comparison to other activities?

Facts:

The Organization was incorporated as a non-stock corporation in the State of on March 12, 19XX. The purposes stated in the articles of incorporation include the following: “

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The Organization submitted Form 1023 *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to the IRS on June 20, 20XX. The application was signed by the Treasurer, . In Part III Question 1 of the Form 1023, the Organization checked the box confirming that the organizing document meets the Section 501(c)(3) requirement of stating exempt purposes such as charitable, religious, educational and/or scientific purposes. In Part III Question 2c the Organization checked the box indicating reliance on operation of state law for the required dissolution provision. The Organization was subsequently recognized as an organization exempt from federal income tax under IRC Section 501(c)(3) and 509(a)(2).

The attachment to the Form 1023 states the Organization's mission and responsibility to the community is to improve the quality of life for citizen and business owners through its role in economic development, fostering a sense of community and culture & educational advancement.

In a letter dated May 22, 20XX, the Organization was notified by the Service that it was selected for audit for the filing period ended December 31, 20XX. The Information Document Request Form 4564 (IDR), requested the Organization to provide a description of activities conducted during the year under examination, an explanation of how the activities furthered their exempt purpose and the percentage of time and resources spent of each activity. The IDR also advised the Organization the language in the organizing document does not sufficiently limit the purposes to those specifically described in Section 501(c)(3) nor permanently dedicate the assets to purposes described in Section 501(c)(3) as required for tax exemption as an organization described under Section 501(c)(3). The IDR stated the organizing document must be amended and requested amendments including proof of filing.

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The Service received a response from the Organization on August 25, 20XX. In the response, the Organization described several community activities that the organization participated in during 20XX including the following:

- Sponsorship of the annual two day event.
- Co-sponsorship of an amateur BBQ competition
- Various multi-business marketing and promotional campaigns
- Networking and community service opportunities for members

The organization stated although it does not maintain a formal tracking mechanism, it is estimated that the time and resources are utilized as follows:

- XX%
- Barbeque Event XX%
- Other promotion and networking activities XX%

The response did not contain an explanation of how the activities furthered 501(c)(3) purposes. The response also did not contain a certified copy of an amendment to the Articles of Incorporation.

Law:

IRC Section 501(c)(3) provides tax exemption for corporation and foundation that are operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in Section 501(c)(3), an organization must be organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(b)(4) states in part that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which

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it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation Section 53.4942(b)-1(c) states that for the purposes of this section, the term substantially all, shall mean 85% or more.

Regulations section 1.501(c)(3)-1(d)(3) defines the term *educational* as the instruction or the training of the individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community. Examples of educational organizations are primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

In *Spanish American Cultural Association of Bergenfield v. Commissioner*, T.C. Memo. 1994-510, 1994 WL555882, the U.S. Tax Court held that the Spanish American Cultural Association of Bergenfield did not qualify as an organization described in Code section 501(c)(3) because its charitable activities were insubstantial compared to its social activities.

Taxpayer's Position:

After further review and discussion, we are in agreement that based on the mission and community based operations, it may be better suited qualifying for exemption from income tax under a different section of the internal revenue code other than 501(c)(3).

Government's Position:

Issue 1:

The Organization does not meet the organizational test since the Articles of Incorporation does not limit the purposes to those described in Section 501(c)(3) and does not contain an express provision permanently dedicating the assets to purposes specifically described in Section 501(c)(3).

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Issue 2:

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), " an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in Section 501(c)(3)." The Organization's primary activities consist of activities that generally promote social welfare and recreational purposes. These activities are not inherently educational or charitable by itself under 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, educational or other exempt purposes. Thus, the Organization failed to meet the operational test of section 1.501(c)(3)-1(a)(1) and section 1.501(c)(3)-1(c)(1) of the regulations.

Conclusion:

Based on our review of all facts and circumstances referenced above, it is the government's position that the Organization's exempt status should be revoked due it's failure to meet the organizational and operational tests required by IRC Section 501(c)(3).

Accordingly, the organization's exempt status should be revoked effective January 1, 20XX.

Form 1120, US Corporation Income Tax Return, should be filed for the tax periods ending on and after January 1, 20XX.